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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 RICKEY CALHOUN,

9 Petitioner,

10 v.

11 DR. HENRY RICHARDS,

12 Respondent.

Case No. C08-0974RSL

ORDER DENYING  
CERTIFICATE OF APPEALABILITY

13 This matter comes before the Court on petitioner's "Notice of Appeal" which the  
14 Court considers a request for a certificate of appealability under 28 U.S.C. § 2253. Because  
15 petitioner filed his notice of appeal after April 24, 1996, his appeal is governed by the  
16 Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which worked substantial  
17 changes to the law of habeas corpus. Under the amended version of 28 U.S.C. § 2253(c), a  
18 petitioner may not appeal the denial of a habeas corpus petition unless the district court or the  
19 Ninth Circuit issues a certificate of appealability identifying the particular issues that may be  
20 pursued on appeal. United States v. Asrar, 116 F.3d 1268 (9th Cir. 1997).

21 To obtain a certificate of appealability, the petitioner must make a substantial  
22 showing of the denial of a constitutional right. "Obviously the petitioner need not show that he  
23 should prevail on the merits. He has already failed in that endeavor." Barefoot v. Estelle, 463  
24 U.S. 880, 893 n.4 (1983). Rather, he must demonstrate that the resolution of the habeas petition  
25 is debatable among reasonable jurists or that the issues presented were "adequate to deserve  
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1 encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Where a  
2 petition is dismissed on procedural grounds, the Court must determine whether “jurists of  
3 reason” would debate (1) whether the petition states a valid claim of the denial of a  
4 constitutional right and (2) whether the district court’s procedural ruling was correct. Slack, 529  
5 U.S. at 484.

6           Having reviewed the record in this case, including the Report and  
7 Recommendation of the Honorable James P. Donohue, United States Magistrate Judge, the  
8 Court finds that the dismissal of petitioner’s two grounds for relief is not debatable among  
9 reasonable jurists. Petitioner’s claims should not, therefore, be the subject of an appeal.

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11           For all of the foregoing reasons, petitioner’s request for a certificate of  
12 appealability is DENIED.

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14           Dated this 12th day of January, 2009.

15           Robert S. Lasnik

16           Robert S. Lasnik  
17           United States District Judge  
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